

**Letter of Findings: 65-20220065
Overweight Civil Penalty
for the Year 2022**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

The Department denied Carrier's protest of the civil penalty imposed against the Carrier.

ISSUE

I. Motor Vehicles - Overweight Civil Penalty.

Authority: IC § 6-8.1-1-1; IC § 6-8.1-5-1; IC § 9-20-18-14.5; *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014).

Carrier protests the assessment of overweight civil penalty.

STATEMENT OF FACTS

On March 29, 2022, the Indiana State Police ("ISP") cited the Carrier's commercial motor vehicle ("vehicle") for an overweight violation. ISP found that the vehicle was "Overweight gross 1,540 lbs.," also noting "lbs. over an axle/axle groups." Carrier did not have an OSW permit, with the driver "stat[ing] at the time of the stop that he did not have an overweight permit. When the inspection was finished and paperwork returned, [the Driver] stated that he had his permit now." As a result, the Department issued Carrier a "DOR Civil Penalty Proposed Assessment for Oversize/Overweight Violation(s)" in the amount of \$5,000. Carrier filed a protest; an administrative telephonic hearing was held. Additional facts will be provided below, as necessary.

I. Motor Vehicles - Overweight Civil Penalty.

DISCUSSION

Carrier states in its protest letter, "We have reviewed the warning violation given by officer [] and are asking for dismissal or a negotiation settlement of the proposed penalties," and that the Carrier takes "full responsibility for the actions of our driver in this situation where he did not follow company policies and corrective actions were taken to mitigate any future occurrences." Carrier also states, "as a company we are aware of the Indiana OSW laws and commit to full compliance" and that "we did purchase this driver a permit [] for the load that was cited." Despite mentioning settlement in its protest letter, Carrier did not make a proposed settlement offer to the Department. Given that no settlement negotiations took place, a telephonic hearing was held, and this Letter of Findings results.

Turning to the law, pursuant to IC § 6-8.1-1-1, the "fees and penalties assessed for overweight vehicles ([IC 9-20-4](#) and [IC 9-20-18](#))" are a listed tax. Thus, as a threshold issue, it is a taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "[t]he notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing . . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party." *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

The Department's proposed assessment, mailed to Carrier on May 25, 2022, states in pertinent part (**emphasis in the original**):

Indiana Code section 9-20-18-14.5(c): A carrier failing to obtain a permit required under Indiana Code 9-20 is subject to a civil penalty not more than \$5,000 for each violation.

DOR is proposing an assessment of the maximum civil penalty amount of \$5,000 ("Proposed Assessment")

IC § 9-20-18-14.5, in its entirety, states:

(a) The civil penalties imposed under this section are in addition to the other civil penalties that may be imposed under [IC 8](#) and [IC 9](#). Notwithstanding section 12 of this chapter, a civil penalty imposed under this section:

(1) is imposed on the carrier transporting the vehicle or load;

(2) shall be deposited in the motor carrier regulation fund established by [IC 8-2.1-23-1](#);

(3) is in addition to any fees or fines imposed by a court; and

(4) is assessed and determined by the department of state revenue in accordance with the procedures in [IC 6-8.1-5-1](#).

(b) A carrier transporting vehicles or loads under a permit issued under this article that is violated with respect to this article subjects the carrier to a civil penalty of not more than one thousand dollars (\$1,000) for the first violation and not more than one thousand five hundred dollars (\$1,500) for each subsequent violation.

(c) A carrier that transports vehicles or loads subject to this article and fails to obtain a permit required under this article is subject to a civil penalty of not more than five thousand dollars (\$5,000) for each violation described in an Indiana state police vehicle examination report.

(d) A carrier that transports vehicles or loads subject to this article in excess of the legal weight or dimensional limits and for which no permit is available to allow for such excess weight or dimension is subject to a civil penalty of not more than ten thousand dollars (\$10,000) for each issued Indiana state police vehicle examination report.

(e) The department of state revenue may not assess a penalty under this section after more than one (1) year has passed from the date the department is notified of a violation described under subsection (b), (c), or (d).

(f) A carrier against whom a civil penalty is imposed under this section may protest the civil penalty and request an administrative hearing. If a carrier protests a civil penalty, the department of state revenue shall allow the carrier an opportunity to present information as to why the civil penalty should not be assessed or reduced pursuant to a defense provided under section 7 of this chapter.

*(g) The department of state revenue's notice of proposed assessment under [IC 6-8.1-5-1](#) is presumptively valid. (*Emphasis added*).*

Thus, pursuant to IC § 9-20-18-14.5(a)(1), the civil penalty is imposed on the carrier; and in the instant case, the Department issued a proposed assessment for \$5,000 pursuant to IC § 9-20-18-14.5(c).

As noted, Carrier states "we did purchase this driver a permit [] for the load that was cited." Carrier did not establish that it had purchased the permit *prior* to ISP finding the vehicle overweight. And even if, *arguendo*, Carrier had purchased the permit, the driver did not have it on him when requested by the officer; the "General Provisions of an Oversize/Overweight Vehicle Permit" states in pertinent part:

Drivers must have the vehicle permit in possession during transport and must show the permit, on demand, to any police officer, motor carrier inspector, or any authorized employee of the State of Indiana.

Carrier has provided no analysis to show that the ISP report was inaccurate or that the Department misapplied the law. The Department's records also show that Carrier had a previous violation that was settled in May of 2021; the Department declines Carrier's request for settlement in the present case—no settlement offer was made by Carrier, and as noted, the Department's records show Carrier has previously entered into settlement with the Department. Thus, Carrier has failed to meet its burden of proof outlined in IC § 6-8.1-5-1(c).

FINDING

Carrier's protest is denied.

July 29, 2022

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An [html](#) version of this document.